

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

ALLAN CHIOCCA,	)	
Plaintiff,	)	
	)	
VS.	)	
	)	
TOWN OF ROCKLAND, DEIRDRE	)	C.A. NO. 1:19-cv-10482-WGY
HALL, EDWARD KIMBALL, LARRY	)	
RYAN, MICHAEL MULLEN, JR.,	)	
MICHAEL O'LOUGHLIN, RICHARD	)	
PENNY and KARA NYMAN,	)	
Defendants	)	

**DEFENDANT AND COUNTERCLAIM PLAINTIFF  
EDWARD KIMBALL'S SUPPLEMENTAL STATEMENT OF UNDISPUTED  
MATERIAL FACTS  
PURSUANT TO LOCAL RULE 56.1**

In addition to the Statement of Undisputed Facts submitted by the Defendants Town of Rockland, Larry Ryan, Michael Mullen, Jr., Michael O'Loughlin, Richard Penney & Kara Nyman, which Defendant Edward Kimball joins, he submits the following supplemental undisputed material facts.

1. As of May of 2018, Mr. Kimball was Chair of the BOS and a business owner. [Exhibit AA at 39, 54]. In his position as Chair, Town Counsel referred to him as a very active member that was "thoughtful, very evenhanded, and good with handling disputes...[and]... one of the best selectmen [he] had worked with." [Exhibit BB at 43].

2. Mr. Kimball knew nothing about the May 1<sup>st</sup> sexual episode involving Mr. Chiocca and Mrs. Hall at Town Hall until Mrs. Hall called him on May 17. [Exhibit BB at 159:11-24]. She said that she believed something inappropriate had happened on May 1, 2018 at the Town Hall after she and Mr. Chiocca had returned to town hall after drinking at a local pub, that she could not remember precisely what happened and that she had been drunk. [Exhibit BB at

159:16-20]. She said that the next day Mr. Chiocca had thanked her for the “birthday present.” [Exhibit BB at 169:17-24].

3. Mr. Kimball then went to Town Hall and viewed the surveillance tape from May 1. [Exhibit BB at 159:21-24 to 160:1-4; 172:5-7, 11-21]. It showed Mr. Chiocca and Ms. Hall returning to the Town Hall that night and that Mr. Chiocca had his arm around her to assist her up the stairway [Exhibit BB at 194:2-6]. In the video, Ms. Hall appeared to be uneven in her gait and at times leaning heavily into Mr. Chiocca. [Exhibit DD at 73]. The video also showed Mr. Chiocca later exiting his office with his shirt in disarray. [Exhibit BB at 197:13-18]; [Exhibit DD at 73]. Mr. Kimball’s impression after reviewing the video footage was that Mr. Chiocca took advantage of Ms. Hall who seemed intoxicated based on the video footage. [Exhibit AA at 261:7-14]; [Exhibit DD 76:4-12].

4. Later on May 17, Mr. Hall, Mrs. Hall’s husband called him and told Mr. Kimball that when Mrs. Hall came home that night she was really drunk and said something about “blow jobs” and “contracts.” It seemed to him that something sexual must have happened. [Exhibit BB at 160:1-9].

5. At that point, Mr. Kimball contacted John Clifford, the town counsel the morning of May 18, 2018. [Exhibit BB at 200:12-22]; [Exhibit CC at 40]. Clifford suggested that the two of them meet Mr. Chiocca together. [Exhibit CC at 44:8-24]; [Exhibit BB at 200:12-22]. When they met, around 12:30 in the afternoon, on May 18, Chiocca stated that there had been a “blow job.” [Exhibit BB at 200:20-22]; [Exhibit CC at 41, 45]. Mr. Chiocca never stated anything about a contract or being a victim. [Exhibit AA at 260 13-19]; [Exhibit CC at 48-49]. He was simply trying to find a way to exit his employment from the Town. [Exhibit AA at 260: 13-19].

6. Town counsel stated that there would have to be an investigation. [Exhibit BB at 202:12-14].

7. Town counsel informed Mr. Chiocca that he would have to be put on paid administrative leave, and the Board so voted on May 29, 2018. AC00189; [Exhibit CC at 52].

8. In all of his actions concerning Mr. Chiocca, Mr. Kimball relied upon the information provided by Mrs. Hall and Mr. Hall. [Exhibit BB at 192:22-24 to 193:1-5]. This is conceded by Mr. Chiocca, who claims that Mr. Kimball was “played” i.e. deceived Ms. Hall and her husband. [Exhibit HH at 42:11-18; 44:9-24; 45:1-5].

9. As Chairman of the BOS, Mr. Kimball’s actions in response to Ms. Hall and Mr. Hall’s reports of potential sexual harassment and assault of Ms. Hall on May 1 was out of concern for someone who may have been sexually assaulted. [Exhibit CC at 44]; [Exhibit AA at 270, 294]. Mr. Kimball “did what [he] thought was right. [He] did what [he] thought was right...” and what he “thought was – in [his] heart was the best interest for the town...” [Exhibit AA at 270:10-13, 294].

10. According to the 2018 Town of Rockland Employee Handbook, the Sexual Harassment policy requires a “prompt” reaction by the official in which the allegations were reported to and that “all” investigations be conducted “expeditiously as possible”. [Exhibit EE at 203, 204, 205]. Mr. Kimball actions in reporting Ms. Hall’s May 1 allegations of sexual harassment and assault consistent with Town policy. [Exhibit EE at 205, 206].

11. On June 13<sup>th</sup> 2018, Mr. Kimball abstained from the vote regarding how the Town was going to handle Mr. Kimball’s affidavit that he wrote in support of Ms. Hall’s Motion for Temporary Restraining Order to stop the release of the video. [Exhibit AA at 23-24; p. 244:4-11].

12. During the BOS Executive Meeting on July 10, 2018, when the board voted to accept the full investigative report, Mr. Kimball abstained from the vote. [Exhibit FF at 62:11-16]; [Exhibit AA at 241: 7-24].

13. Mr. Kimball did not attend the BOS hearing regarding Mr. Chiocca's discipline on July 17, 2018. [Exhibit AA at 243:24; 244:1-3].

14. Mr. Kimball resigned from the BOS on July 31, 2018. [Exhibit AA at 58].

15. Mr. Kimball was not a member of the BOS when it voted to decline Mr. Chiocca's contract extension on November 20, 2018. See Defendants' SOF ¶¶64-78.

Dated: November 15, 2021

Respectfully submitted,

EDWARD KIMBALL

By his attorneys,

/s/ Tara D. Dunn

Howard M. Cooper (BBO # 543842)

Tara D. Dunn (BBO #699329)

TODD & WELD LLP

One Federal Street, 27<sup>th</sup> Floor

Boston, MA 02110

T: 617-720-2626

hcooper@toddweld.com

tdunn@toddweld.com

### **CERTIFICATE OF SERVICE**

I hereby certify that the foregoing, filed through the Electronic Case Filing System, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and that a paper copy shall be served upon those indicated as non-registered participants on November 15, 2021.

/s/ Tara D. Dunn

Tara D. Dunn